

REMARKS/ARGUMENTS

Applicants have carefully reviewed the Office Action dated November 12, 2004, regarding the above-referenced application. Currently claims 1-4, 6-12, 14-19 and 21-29 are pending in the application, wherein claims 1, 4, 6-9, 17-19, 21-26, 28 and 29 are rejected and claims 2, 3, 12, 14-16 and 27 are objected to. Claims 17 and 18 have been amended with this response.

Claims 1, 4, 6-9, 17-24, 28 and 29 stand rejected under 35 U.S.C. §102(b) as being anticipated by Phan et al. (U.S. Patent No. 5,192,286). Applicants respectfully traverse this rejection.

Claim 1 recites an embolus extractor comprising first and second struts each having a proximal end and a distal end coupled to the distal end of an elongate shaft. Applicants assert Phan at least fails to teach this limitation of the invention as claimed. The prior art must teach the claimed invention in as much detail, including all structural limitations, as provided in the rejected claim. See *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913 (Fed. Cir. 1989); *Lindemann Maschinenfabrik v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984).

The Examiner asserts Phan teach "first and second struts (26)." Applicants respectfully traverse this assertion. Element 26 of Phan is a slack net structure. Applicants assert the Examiner's characterization of the slack net structure 26 as first and second struts is without merit. Words of a claim must be given their plain meaning unless otherwise defined in the specification. See M.P.E.P. §2111.01. "In other words, they must be read as they would be interpreted by those of ordinary skill in the art."

M.P.E.P. §2111.01, citing *In re Sneed*, 710 F.2d 1544, 218 USPQ 385 (Fed. Cir. 1983). Applicants assert one of ordinary skill in the art would not correlate a first and second strut with a slack net structure. A net is clearly not a strut. The components are structurally dissimilar and distinct within the art. Applicants assert Phan fails to teach first and second struts with further limitations as claimed in claim 1. Therefore, claim 1 is believed to be patentable over the teachings of Phan, and withdrawal of this rejection is requested. Claims 4, 6-9 and 17 depend from claim 1 and provide additional limitations not found in the prior art. Therefore, they are also believed to be in condition for allowance.

Claim 18 recites a first strut having a proximal end and a distal end, wherein the proximal end and the distal end of the strut are coupled to the shaft. As stated above, Applicants traverse the Examiner's assertion that the slack net structure taught in Phan is a strut as currently claimed. Nevertheless, Phan fails to teach a first strut having a proximal end and a distal end, wherein the proximal end and the distal end are coupled to the shaft. Only one end of the net structure taught in Phan may be coupled to a shaft. The opposing end is secured to the loop member 28. Furthermore, if the Examiner wishes to rely on the loop member 28 as teaching a first strut, Applicants assert Phan still fails to teach all the limitations of the claimed invention. Applicants assert both the proximal and distal ends of the strut as currently claimed are coupled to the shaft. However, regarding the invention taught by Phan, only the distal end of the loop member 28 is coupled to the pull wire 18 and the proximal end of the loop member 28 is coupled to the elongate catheter body 12. Therefore, Phan lacks the structural limitations of the claimed invention necessary to anticipate. Applicants assert claim 18 is in condition for

allowance and claims 19-24, which depend from claim 18, are likewise in condition for allowance.

Claim 28 recites a method of withdrawing an embolus extractor including providing an embolus extractor having a plurality of struts disposed at the distal end of an elongate shaft. Applicants reassert that the Examiner's reliance on the slack net structure 26 as being a plurality of struts is without merit. One of ordinary skill in the art would not correlate a plurality of struts as currently claimed with a net structure as taught in Phan. The net taught in Phan is distinctly different from the plurality of struts claimed in claim 28. Applicants assert for at least this reason Phan fails to teach the claimed invention, and claim 28 is in condition for allowance. It follows that because claim 29 depends from claim 28, it also is in condition for allowance. It is also noted that the Examiner asserts at page 4, paragraph 6 of the Office Action "Phan et al. ... do not disclose a radiopaque marker at the distal end of the microcatheter." Therefore, the Examiner admits Phan does not anticipate claim 29.

Claims 10, 11, 25 and 26 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Phan et al. (U.S. Patent No. 5,192,286) in view of Oslund et al. (U.S. Patent No. 6,740,061). Applicants respectfully traverse this rejection. In order to establish a *prima facie* case of obviousness, each and every limitation of the claimed invention must be taught or suggested by the combination. See M.P.E.P. §2143.03. For the reasons stated above regarding claims 1 and 18, Phan fails to teach each and every claim limitation of the underlying base claims. Oslund fails to remedy the shortcomings of Phan. Namely, Oslund at least fails to teach a first and second strut as claimed in claim 1 or a first strut having both a proximal end and a distal end coupled to a shaft as

claimed in claim 18. Therefore, no *prima facie* case may be established with the stated combination, and claims 10, 11, 25 and 26, which depend from either claim 1 or 18, are believed to be in condition for allowance.

Claim 29 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Phan et al. (U.S. Patent No. 5,192,286) in view of Ladd (U.S. Patent No. 6,059,814). Applicants respectfully traverse this rejection. Ladd fails to remedy the deficiencies of Phan discussed above regarding claim 28. Therefore, a *prima facie* case has not been established with the combination of references. Claim 29 is believed to be in condition for allowance and withdrawal of the rejection is requested.

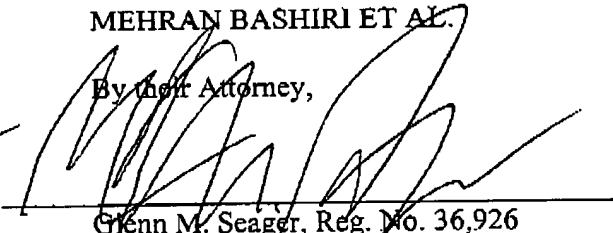
Reexamination and reconsideration is respectfully requested. It is believed that all pending claims are currently in condition for allowance. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at 612.677.9050.

Respectfully submitted,

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By their Attorney,

Date: Jun. 17, 2005


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